

Complaint

IN THE MATTER OF

THE BOEING COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3992; File No. 0010092**Complaint, December 29, 2000--Decision, December 29, 2000*

This consent order addresses the \$3.75 billion acquisition by The Boeing Company of Hughes Space and Communications from General Motors Corporation. The complaint alleges that the transaction, if consummated, would give Boeing anticompetitive advantages in the markets for satellites and satellite technologies and systems engineering and technical assistance ("SETA") services to the United States Department of Defense. The order prohibits respondent from performing certain SETA services for the classified program in the future. To prevent the exchange of anticompetitive information the order also requires respondent to use non-public SETA services information only its capacity as provider of technical assistance to DoD, or for the provision of SETA services not prohibited by the Order and erect a Firewall between its SETA services division and Boeing's satellite division. In addition, respondent is required to assist DoD in transferring the SETA services to one of its own research and development centers by providing technical assistance, at the request of DoD, for a period not to exceed one year and providing to DoD all documents relating to certain SETA services that Boeing has received in its role as SETA contractor. The order also prohibits Respondent's satellite business from providing any non-public launch information to Respondent's launch vehicle business, and likewise providing any non-public information from its launch vehicle business to its satellite business. The order requires that for any satellite manufactured by Boeing/Hughes prior to the date the agreement becomes final, Boeing must provide satellite interface information, to any launch vehicle supplier within thirty days from the date Boeing receives a request for such information and provide satellite interface information relating to any of its satellite buses, models, or product lines manufactured after the date this agreement becomes final, to any launch vehicle supplier that requests such information or to whom Boeing previously supplied satellite interface information. For each satellite manufactured for the United States Government, Boeing shall only be required to provide satellite interface information to any launch vehicle supplier specified by the United States Government. In addition, the order requires Boeing/Hughes to provide satellite interface information to any launch vehicle supplier specified by any satellite

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customer no later than Boeing provides such information to its own launch vehicle businesses.

Participants

For the Commission: *Norman A. Armstrong, Jr., Rodney B. Choo, Tamara L. Bond.*

For the Respondents: *Benjamin S. Sharp and Thomas L. Boeder, Perkins Coie, Peter D. Standish, Alan R. Kusnitz, and Fiona A. Schaeffer, Weil, Gotshal & Manges, Raymond A. Jacobsen and Jon B. Dubrow, McDermott, Will & Emery, and Douglas F. Boeder and Kevin M. King, Coudert Brothers.*

COMPLAINT

The Federal Trade Commission (ACommission@), having reason to believe that Respondent The Boeing Company (ABoeing@), a corporation subject to the jurisdiction of the Commission, has agreed to acquire certain assets of General Motors Corporation, a company subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. ASETA Services@ means systems engineering, technical assistance and support services relating to a certain classified contract between the United States Department of Defense and Boeing identified for purposes of this Complaint as Contract 4208.

2. ASatellite@ means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back

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to Earth and is designed either to orbit the Earth or to travel away from the Earth.

3. ACommercial Low Earth Orbit Satellite@ means a Satellite that is designed to orbit at approximately 100 miles to 300 miles above the Earth=s surface in low earth orbit for the purpose of transmitting data back to Earth, which is sold to any customer other than the U.S. government.

4. ACommercial Medium Earth Orbit Satellite@ means a Satellite that is designed to orbit approximately 10,000 miles above the Earth=s surface in medium earth orbit for the purpose of transmitting data back to Earth, which is sold to any customer other than the U.S. government.

5. ACommercial Geosynchronous Earth Orbit Satellite@ means a Satellite that is designed to orbit approximately 22,300 miles above the Earth=s surface in geosynchronous earth orbit for the purpose of transmitting data back to Earth, which is sold to any customer other than the U.S. government.

6. AGovernment Satellite@ means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back to Earth and is designed either to orbit the Earth or to travel away from the Earth and is sold to the U.S. government.

7. ALaunch Vehicle@ means any vehicle designed to launch one or more Satellites from the Earth=s surface into space.

8. ARespondent@ means Boeing.

9. AHughes" means Hughes Space and Communications Company, Hughes Space and Communications International, Hughes Space and Communications International Service Company, Spectrolab, Inc., Hughes Electron Dynamics, Hughes

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Telecommunications and Space Company=s 2.69% interest in ICO Global Communications Ltd., and Hughes Telecommunications and Space Company=s 2% interest in Thuraya Satellite Telecommunications Private Joint Stock Company.

II. RESPONDENT

10. Respondent Boeing is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7755 E. Marginal Way South, Seattle, Washington 98108. Respondent Boeing is engaged in, among other things, the research, development, manufacture and sale of: Satellites, including Commercial Low Earth Orbit Satellites and Government Satellites, and Launch Vehicles.

11. Respondent is, and at all times relevant herein has been, engaged in commerce as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and is a corporation whose business is in or affecting commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

III. ACQUIRED COMPANY

12. General Motors is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Renaissance Center, P.O. Box 100, Detroit, Michigan 48265-1000. General Motors, through its subsidiary Hughes, is engaged in, among other things, the research, development, manufacture, and sale of Satellites, including Commercial Geosynchronous Earth Orbit Satellites, Commercial Medium Earth Orbit Satellites, and Government Satellites.

13. General Motors is, and all times herein has been, engaged in commerce as Acommerce@ is defined in Section 1 of the

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Clayton Act, as amended, 15 U.S.C. ' 12, and is a corporation whose business is in or affecting commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

IV. THE ACQUISITION

14. On January 13, 2000, Boeing and General Motors Corporation subsidiaries, Hughes Electronics Corporation and Hughes Telecommunications and Space Company, entered into a Stock Purchase Agreement under which Boeing is to acquire certain assets of General Motors Corporation, including Hughes, for approximately \$3.75 billion (AAcquisition@).

V. THE RELEVANT MARKETS

15. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- a. the provision of SETA Services;
- b. a certain classified program for which Respondent is providing SETA Services;
- c. the research, development, manufacture and sale of Commercial Geosynchronous Earth Orbit Satellites;
- d. the research, development, manufacture and sale of Commercial Medium Earth Orbit Satellites;
- e. the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites;
- f. the research, development, manufacture and sale of Government Satellites; and

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g. the research, development, manufacture and sale of Launch Vehicles.

16. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition on the provision of SETA Services and a certain classified program for which Respondent is providing SETA Services.

17. For purposes of this Complaint, the world is the relevant geographic area in which to analyze the effects of the Acquisition on the research, development, manufacture and sale of Commercial Geosynchronous Earth Orbit Satellites, Commercial Medium Earth Orbit Satellites, and Commercial Low Earth Orbit Satellites.

18. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition on the research, development, manufacture and sale of Government Satellites.

19. For purposes of this Complaint, the United States or the world is the relevant geographic area in which to analyze the effects of the Acquisition on the research, development, manufacture and sale of Launch Vehicles, depending on the customer.

VI. STRUCTURE OF THE MARKETS

20. The market for the provision of SETA Services is highly concentrated as measured by the Herfindahl-Hirschman Index (AHHI@). Respondent has been the only provider of SETA Services.

21. Respondent, through the Acquisition, would be engaged in the provision of SETA Services, while at the same time would be a competing bidder, for a certain classified program.

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22. The research, development, manufacture and sale of Satellites, including Commercial Geosynchronous Earth Orbit Satellites, Commercial Medium Earth Orbit Satellites, Commercial Low Earth Orbit Satellites, and Government Satellites, are all highly concentrated markets as measured by the HHI.

23. The market for Launch Vehicles is highly concentrated as measured by the HHI.

24. Respondent, through the Acquisition, would be engaged in the research, development, manufacture and sale of Launch Vehicles and a wide range of Satellites, which are launched from the Earth=s surface by Launch Vehicles.

VII. BARRIERS TO ENTRY

25. Entry into the market for the provision of SETA Services would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 28 because of, among other things, the time required to develop the experience and expertise necessary to effectively provide these services.

26. Entry into the markets for the research, development, manufacture and sale of Commercial Geosynchronous Earth Orbit Satellites, Commercial Medium Earth Orbit Satellites, Commercial Low Earth Orbit Satellites, and Government Satellites, is difficult, unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 28 because of, among other things, the time and expense required to research and develop a competitive product, acquire the necessary manufacturing equipment and facilities, and establish a reputation for high quality products among customers in these markets.

27. Entry into the market for the research, development, manufacture and sale of Launch Vehicles is difficult, unlikely and

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would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 28 because of, among other things, the time and expense required to research and develop a competitive product, acquire the necessary manufacturing equipment and facilities, and establish a reputation for high quality products among customers in these markets.

VIII. EFFECTS OF THE ACQUISITION

28. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45, in the following ways, among others:

(a) Respondent, as a supplier of SETA Services, may be in a position to disadvantage or raise the costs of other competitors for a certain classified program, whereby actual competition between Respondent and other competitors for that program would be reduced;

(b) Respondent may gain access to competitively sensitive non-public information concerning other Satellite suppliers, whereby:

(1) actual competition between Respondent and Satellite suppliers would be reduced; and

(2) the research, development, innovation and quality of Satellites may be reduced;

(c) Respondent may gain access to competitively sensitive non-public information concerning other Launch Vehicle suppliers, whereby:

(1) actual competition between Respondent and Launch Vehicle suppliers would be reduced; and

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(2) the research, development, innovation and quality of Launch Vehicles may be reduced; and

(d) Respondent, as a supplier of Satellites and Launch Vehicles, may be in a position to disadvantage or raise the costs of other Launch Vehicle suppliers by withholding Satellite information necessary to make a Satellite compatible with a Launch Vehicle.

IX. VIOLATIONS CHARGED

29. The Acquisition agreement described in Paragraph 14 constitutes a violation of Section 5 of the FTC Act, as amended 15 U.S.C. ' 45.

30. The Acquisition described in Paragraph 14, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of December, 2000, issues its Complaint against said Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (ACommission@), having initiated an investigation of the proposed acquisition by Respondent The Boeing Company (ABoeing@) of certain assets of

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General Motors Corporation, and Respondent having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (AConsent Agreement@), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission=s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. ' 2.34, and having determined to modify the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (AOrder@):

1. Respondent Boeing is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of

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business located at 7755 E. Marginal Way South, Seattle, Washington 98108.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. ARespondent@ or ABoeing@ means The Boeing Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.
- B. AHughes" means Hughes Space and Communications Company, Hughes Space and Communications International, Hughes Space and Communications International Service Company, Spectrolab, Inc., Hughes Electron Dynamics, Hughes Telecommunications and Space Company=s 2.69% interest in ICO Global Communications Ltd., and Hughes Telecommunications and Space Company=s 2% interest in Thuraya Satellite Telecommunications Private Joint Stock Company.
- C. AAcquisition@ means the proposed acquisition of Hughes by Boeing pursuant to the Stock Purchase Agreement dated January 13, 2000.
- D. ACommission@ means the Federal Trade Commission.
- E. ASatellite Interface Information@ means any information necessary for a Launch Vehicle Supplier to research, develop, manufacture or modify any Launch Vehicle for use with Respondent=s Satellites.
- F. Launch Vehicle" means any vehicle with the lift capability to launch any Satellite manufactured by Respondent.

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- G. ALaunch Vehicle Supplier@ means any entity engaged in the research, development, manufacture or sale of Launch Vehicles, including any Boeing Launch Vehicle Business or Sea Launch.
- H. "Satellite" means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back to Earth and which is designed either to orbit the Earth or to travel away from the Earth. The term Satellite does not include missiles and unmanned aerial vehicles.
- I. ASatellite Manufacturer@ means any entity engaged in the research, development, manufacture or sale of Satellites.
- J. ASea Launch@ means the Launch Vehicle company jointly owned by Boeing, Kvaerner Maritime A.S., RSC Energia, and KB Yuzhnoye/PO Yuzmash, which is headquartered at Sea Launch Home Port, 2700 Nimitz Road, Long Beach, California 90802-1047.
- K. "Boeing Launch Vehicle Business" means any Boeing entity engaged in the research, development, manufacture or sale of Launch Vehicles.
- L. "Boeing Satellite Business" means any Boeing entity engaged in the research, development, manufacture or sale of Satellites.
- M. "Non-Public Launch Vehicle Information" means any information disclosed by any Launch Vehicle Supplier to any Boeing Satellite Business. Non-Public Launch Vehicle Information shall not include: (1) information already within the public domain; (2) information that falls within the public domain through no violation of this Order by Respondent; (3) information disclosed by any

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Boeing Launch Vehicle Business; (4) information that becomes known to Respondent from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information; and (5) information after six (6) years from the date of disclosure of such Non-Public Launch Vehicle Information to Boeing=s Satellite Business, or such other period as agreed to in writing by Respondent and a provider of the information.

- N. "Non-Public Satellite Information" means any information disclosed by any Satellite Manufacturer or owner to Boeing=s Launch Vehicle Business or Sea Launch. Non-Public Satellite Information shall not include: (1) information already within the public domain; (2) information that falls within the public domain through no violation of this Order by Respondent; (3) information disclosed by any Boeing Satellite Business; (4) information that becomes known to Respondent from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information; and (5) information after six (6) years from the date of disclosure of such Non-Public Satellite Information to any Boeing Launch Vehicle Business or Sea Launch, or such other period as agreed to in writing by Respondent and a provider of the information.
- O. ASETA Services@ means systems engineering, technical assistance, and support services relating to a certain classified contract between the United States Department of Defense and Boeing identified for purposes of this Order as Contract 4208.
- P. ANon-Public SETA Services Information@ means any information not in the public domain disclosed by the United States Department of Defense or any company, other than Hughes, to Respondent in its capacity as the provider of SETA Services.

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II.**IT IS FURTHER ORDERED** that:

- A. Respondent shall provide no further SETA Services on classified programs identified in Section 3.2 of a modification dated August 1, 2000, to a certain classified contract between the United States Department of Defense and Respondent, identified for purposes of this Order as Contract 4208.
- B. Upon reasonable notice from the United States Department of Defense, Respondent shall provide such training and assistance to the United States Department of Defense as is reasonably necessary to enable the United States Department of Defense to provide SETA Services in substantially the same manner and quality as provided by Respondent prior to the Acquisition. Such assistance shall include reasonable consultation with knowledgeable employees and training at a facility designated by the United States Department of Defense for a period of time sufficient to satisfy the United States Department of Defense that its personnel are appropriately trained in the skills necessary to perform SETA Services in substantially the same manner and quality provided by Respondent prior to the Acquisition. However, Respondent shall not be required to continue providing such technical assistance for more than one (1) year from the date the Respondent signs the Consent Agreement. Respondent shall charge the United States Department of Defense at a rate no more than its own costs for providing such technical assistance.
- C. Respondent shall use any Non-Public SETA Services Information only in Respondent's capacity as provider of technical assistance to the United States Department of Defense, pursuant to Paragraph II.B. of this Order, or SETA work authorized by the August 1, 2000,

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modification to a certain classified contract between the United States Department of Defense and Respondent, identified for purposes of this Order as Contract 4208.

- D. Respondent shall not provide, disclose, or otherwise make available Non-Public SETA Services Information to any Boeing Satellite Business.
- E. Within ten (10) days of the date the Commission accepts the Consent Agreement for public comment, Respondent shall return or submit to the United States Department of Defense all documents, including all copies, in the possession of Respondent that were received or created by Respondent in its capacity as a provider of the SETA Services identified in Section 3.2 of a modification dated August 1, 2000, to a certain classified contract between the United States Department of Defense and Respondent, identified for purposes of this Order as Contract 4208, except for documents necessary to provide the technical assistance identified in Paragraph II.B.

III.**IT IS FURTHER ORDERED** that:

- A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Satellite Information, provide, disclose or otherwise make available to any Boeing Satellite Business any Non-Public Satellite Information.
- B. Respondent shall use any Non-Public Satellite Information only in Respondent's capacity as a Launch Vehicle Supplier, absent the prior written consent of the proprietor of Non-Public Satellite Information.

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IV.**IT IS FURTHER ORDERED** that:

- A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Launch Vehicle Information, provide, disclose or otherwise make available to any Boeing Launch Vehicle Business or Sea Launch any Non-Public Launch Vehicle Information.
- B. Respondent shall use any Non-Public Launch Vehicle Information only in Respondent=s capacity as a Satellite Manufacturer, absent the prior written consent of the proprietor of Non-Public Launch Vehicle Information.

V.

IT IS FURTHER ORDERED that within thirty (30) days from the date on which the Respondent signs the Consent Agreement, Respondent shall take steps to ensure that all employees of any Boeing Launch Vehicle Business and any Boeing Satellite Business comply with Paragraphs II., III. and IV. of this Order. Such steps shall include without limitation: (1) distribution of this Order to Sea Launch, and to the directors, officers, and employees of any Boeing Launch Vehicle Business and any Boeing Satellite Business; (2) development of procedures, policies, and practices relating to the receipt, identification, custody, use, and disposal of any Non-Public Satellite Information, Non-Public Launch Vehicle Information, and Non-Public SETA Services Information; (3) incorporation of such procedures, policies, and practices into Respondent=s operations manuals or other systems used for disseminating such procedures, policies, and practices; (4) in-person training of the employees of any Boeing Launch Vehicle Business and any Boeing Satellite Business; and (5) development of new procedures or incorporation into existing procedures measures to

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be used in the event an employee of any Boeing Launch Vehicle Business or any Boeing Satellite Business fails to comply with such procedures, policies, and practices.

VI.**IT IS FURTHER ORDERED** that:

- A. Respondent shall notify all Launch Vehicle Suppliers, in writing, that Satellite Interface Information relating to any Respondent Satellite bus, model, or product line is available upon request for any Respondent Satellite; **provided, however,** Respondent shall not provide such notification for any United States Government Satellite. Respondent shall make such notification:
 - 1. Within thirty (30) days from the date this Order becomes final for each Satellite manufactured prior to the date this Order becomes final; and
 - 2. No later than thirty (30) days before the date Respondent provides any Satellite Interface Information to any Boeing Launch Vehicle Business or to Sea Launch for any Respondent Satellite bus, model, or product line manufactured after the date this Order becomes final.
- B. Respondent shall furnish each Launch Vehicle Supplier with instructions for requesting Satellite Interface Information relating to any Respondent Satellite bus, model or product line at the same time Respondent notifies the Launch Vehicle Supplier pursuant to Paragraph VI.A.
- C. Respondent shall provide all Satellite Interface Information relating to any Respondent Satellite bus, model, or product line to any Launch Vehicle Supplier:
 - 1. For any Satellite manufactured prior to the date this Order becomes final, within thirty (30) days from the date Respondent receives a request from such Launch

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Vehicle Supplier; **provided, however,** that Respondent shall not be required by this Paragraph VI.C.1 to provide Satellite Interface Information for any Satellite manufactured for the United States Government prior to the date this Order becomes final.

2. For any Satellite manufactured after the date this Order becomes final, (i) who requests such information, or (ii) to whom Respondent has previously supplied such information, at a time no later than Respondent provides any Satellite Interface Information to any Boeing Launch Vehicle Business or to Sea Launch; **provided, however,** that if Respondent receives a request for Satellite Interface Information after it has provided such information to any Boeing Launch Vehicle Business or Sea Launch pursuant to the requirements of this Paragraph, Respondent shall provide the Satellite Interface Information within twenty (20) days after receiving the request; **provided, further,** that for each Satellite manufactured for the United States Government, Respondent shall only be required to provide Satellite Interface Information to any Launch Vehicle Suppliers specified by the United States Government.

- D. Respondent shall provide to any Launch Vehicle Supplier to whom Satellite Interface Information relating to any Respondent Satellite bus, model, or product line has been previously supplied any revisions to such Satellite Interface Information at a time no later than it provides such revisions to any Boeing Launch Vehicle Business or Sea Launch.
- E. Respondent shall provide Satellite Interface Information to any Launch Vehicle Supplier specified by any Satellite customer at a time no later than Respondent provides such

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information to any Boeing Launch Vehicle Business or to Sea Launch.

- F. All obligations of this Paragraph shall be subject to Respondent's compliance with the export licensing laws, rules and regulations of the United States that may be applicable to Respondent's export of Satellite Interface Information. Respondent shall use its best efforts to obtain permission pursuant to such export licensing laws, rules and regulations relating to the export of Satellite Interface Information required by this Paragraph.
- G. Respondent may make the receipt of Satellite Interface Information subject to a Launch Vehicle Supplier's prior execution of a confidentiality agreement comparable to industry standards of confidentiality.
- H. Respondent shall create and maintain records sufficient to identify: (1) the contents of any Satellite Interface Information provided to each Launch Vehicle Supplier for each of Respondent's Satellites, and (2) all Launch Vehicle Suppliers to whom Respondent has provided Satellite Interface Information or notification pursuant to this Paragraph. Such Launch Vehicle Supplier records shall include the name of the Launch Vehicle Supplier, its address, the name and telephone number of the contact person, and the date on which Respondent provided Satellite Interface Information.
- I. Nothing in this Paragraph shall preclude Respondent from entering into any agreement for the purpose of facilitating integration between any Respondent Satellite and any Launch Vehicle.

VII.

IT IS FURTHER ORDERED that:

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- A. Sheila Widnall is hereby appointed to serve as Monitor Trustee to assure that Respondent fully performs its responsibilities in a timely manner as required by this Order.
- B. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:
 - 1. The Monitor Trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.
 - 2. Within twenty (20) days after it signs the Consent Agreement, Respondent shall execute a trust agreement that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondent's compliance with the terms of this Order in a manner consistent with the purposes of this Order. The Monitor Trustee shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
 - 3. The Monitor Trustee shall serve for ten (10) years from the date the trust agreement is approved by the Commission.
 - 4. The Monitor Trustee shall have full and complete access to Respondent's personnel, books, records,

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documents, facilities and technical information relating to compliance with this Order, or to any other relevant information, as the Monitor Trustee may reasonably request, to the extent permissible under applicable governmental security procedures. Respondent shall cooperate with any reasonable request of the Monitor Trustee, including any request for assistance to obtain any necessary security clearances. Respondent shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondent's compliance with this Order.

5. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. Respondent shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.
7. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act

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diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee. The Commission shall select a substitute Monitor Trustee subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed substitute Monitor Trustee, Respondent shall be deemed to have consented to the selection of the proposed substitute. Respondent shall execute the trust agreement required by Paragraph VII.B.2 of this Order within ten (10) days after the Commission appoints a substitute Monitor Trustee. The substitute Monitor Trustee shall serve according to the terms and conditions of this Paragraph VII.

8. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
9. The Monitor Trustee shall report in writing to the Commission concerning Respondent's compliance with this Order:
 - a. Every sixty (60) days for a period of six months from the date Respondent signs the Consent Agreement; and
 - b. Annually thereafter on the anniversary of the date this Order becomes final during the remainder of

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the Monitor Trustee=s period of appointment pursuant to this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondent shall deliver a copy of this Order to any Launch Vehicle Supplier prior to obtaining from the Launch Vehicle Supplier any Non-Public Launch Vehicle Information relating to that Launch Vehicle Supplier=s Launch Vehicles. Within ten (10) days of the date the Commission accepts the Consent Agreement for public comment, Respondent shall deliver a copy of this Order to any Launch Vehicle Supplier that has previously supplied Non-Public Launch Vehicle Information to Hughes.
- B. Respondent shall deliver a copy of this Order to any Satellite Manufacturer prior to obtaining from the Satellite Manufacturer any Non-Public Satellite Information relating to that Satellite Manufacturer=s Satellites.

IX.

IT IS FURTHER ORDERED that within sixty (60) days after the date this Order becomes final and annually for the next ten (10) years on the anniversary of the date this Order becomes final, and at such times as the Commission may require, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. through VIII. of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. through VIII. of this Order.

X.

Analysis to Aid Public Comment

IT IS FURTHER ORDERED THAT RESPONDENT shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance arising out of this Order.

XI.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to its principal United States office, Respondent shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on December 29, 2020.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (ACommission@) has accepted, subject to final approval, an Agreement Containing Consent Order (AConsent Agreement@) from The Boeing Company (ABoeing@) designed to remedy the anticompetitive effects resulting from Boeing=s acquisition of certain assets of General Motors Corporation. The proposed Consent Agreement prohibits Boeing from providing systems engineering and technical assistance (ASETA@) services to the United States Department of Defense (ADoD@) for a certain classified program. The proposed Consent Agreement also prohibits Boeing=s launch vehicle division from gaining access to any non-public information that Boeing=s satellite division receives from competing launch vehicle suppliers when those competing suppliers launch Boeing=s satellites. Similarly, the proposed Consent Agreement prohibits Boeing=s satellite division from gaining access to any non-public information that Boeing=s launch vehicle business receives from competing satellite suppliers. In addition, the proposed Consent Agreement requires Boeing to make available all necessary satellite interface information, which is used to make a satellite compatible with a launch vehicle, to all launch vehicle suppliers.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the proposed Decision & Order.

Pursuant to a Stock Purchase Agreement entered into on January 13, 2000, Boeing agreed to acquire certain assets of General Motors Corporation, including Hughes Space and Communications Company, Hughes Space and Communications

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International, Hughes Space and Communications International Service Company, Spectrolab, Inc., Hughes Electron Dynamics, Hughes Telecommunications and Space Company=s 2.69% interest in ICO Global Communications Ltd., and Hughes Telecommunications and Space Company=s 2% interest in Thuraya Satellite Telecommunications Private Joint Stock Company, for approximately \$3.75 billion. The Commission=s Complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 45, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 18, in the following markets:

- (1) a certain classified program for which Boeing is providing SETA services;¹
- (2) the research, development, manufacture, and sale of commercial geosynchronous earth orbit satellites;
- (3) the research, development, manufacture, and sale of commercial medium earth orbit satellites;
- (4) the research, development, manufacture, and sale of commercial low earth orbit satellites;
- (5) the research, development, manufacture, and sale of government satellites; and

¹ The complaint includes an additional line of commerce, the provision of SETA Services, in which to analyze the effects of the transaction. This line of commerce is included in the complaint because the proposed merger results in the integration of Boeing into two non-horizontal markets: (1) the provision of SETA Services; and (2) a competitor for a certain classified program for which Boeing is providing SETA services. It is necessary to analyze the competitive conditions in the market for the provision of SETA Services in order to determine whether there would be anticompetitive effects in the related market for a certain classified program for which Boeing is providing SETA services.

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- (6) the research, development, manufacture, and sale of launch vehicles.

The proposed Consent Agreement remedies the alleged violations in each market. First, Boeing is the sole supplier of SETA services to DoD for a certain classified program. Boeing provides these services to DoD under a classified contract identified for purposes of the Complaint as Contract 4208. Hughes is one of two competing contractors for the classified program for which Boeing is providing SETA services. Thus, as a result of the proposed acquisition, Boeing would be both the provider of SETA services and a competing contractor for this classified program.

As a SETA contractor, Boeing must receive a great deal of competitively sensitive information, including detailed cost and bidding data, from contractors competing for the classified program. With access to such information, Boeing may be able to raise prices for the classified program by bidding less aggressively than it otherwise would. In addition, Boeing's position as SETA contractor could enable it anticompetitively to favor itself and/or disfavor its competitors in a number of ways, such as submitting unfair evaluations of its competitors' proposals.

The proposed Consent Agreement remedies the proposed acquisition's potential anticompetitive effects in this classified program by prohibiting Boeing from performing certain SETA services for this classified program in the future. To prevent the anticompetitive exchange of information, the Consent Agreement requires Boeing to: (1) use non-public SETA services information only its capacity as provider of technical assistance to DoD, or for the provision of SETA services not prohibited by the Order; and (2) erect a firewall between its SETA services division and Boeing's satellite division. In addition, to assist DoD in the transition of these SETA services responsibilities to one of its own research and development centers, the Consent Agreement further requires Boeing to: (1) provide technical

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assistance, at the request of DoD, for a period not to exceed one year; and (2) provide to DoD all documents relating to certain SETA services that Boeing has received in its role as SETA contractor.

Second, Hughes is a significant supplier of satellites and Boeing is a significant supplier of launch vehicles, which are used to launch satellites from the Earth=s surface into space. In order for a launch vehicle to launch a satellite, launch vehicle suppliers and satellite suppliers must work closely together and share a substantial amount of proprietary and competitively sensitive information to integrate the two products. Thus, as a significant supplier of launch vehicles, Boeing/Hughes would have access to competitively sensitive information of competing satellite manufacturers which it could share with its satellite divisions. If Boeing=s satellite divisions gained access to this information, Boeing would be able to determine the cost and technology involved in its competitors= satellite proposals. This could have immediate anticompetitive consequences on upcoming satellite procurements by allowing Boeing to bid less aggressively than it otherwise would. In addition, the incentives of other satellite suppliers to invest in future technological advancements could be reduced due to concerns that Boeing would be able to Afree-ride@ off its competitors= technological innovations. As a significant supplier of satellites, Boeing/Hughes likewise would have access to sensitive information of competing launch vehicle providers. If Boeing=s launch vehicle division were to gain access to this information, it could allow Boeing to bid less aggressively in upcoming launch vehicle procurements and reduce incentives of competitors to invest in technological innovation.

The proposed Consent Agreement is designed to protect the proprietary and competitively sensitive information of launch vehicle and satellite suppliers. Specifically, the Consent Agreement prohibits Boeing=s satellite business from making any non-public launch vehicle information obtained from any launch

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vehicle provider available to Boeing=s launch vehicle business. Under the proposed Consent Agreement, Boeing may only use such information as a provider of satellites. Similarly, the proposed Consent Agreement prohibits Boeing=s launch vehicle business from making any non-public satellite information obtained from any satellite supplier available to Boeing=s satellite business. Under the terms of the Consent Agreement, Boeing may only use such information in its capacity as a launch vehicle provider. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including: Lockheed Martin, (C-3685) (September 20, 1996); Raytheon Company, (C-3681) (September 10, 1996); Lockheed Corporation/Martin Marietta Corporation, (C-3576) (May 9, 1995); Alliant Techsystems Inc., (C-3567) (April 7, 1995); Martin Marietta, (C-3500) (June 28, 1994).

Third, the proposed acquisition raises concern that Boeing could withhold satellite interface information, which is necessary to integrate a satellite with a launch vehicle, from its launch vehicle competitors. If Boeing were to withhold such satellite interface information, it could potentially disadvantage or raise the costs of other launch vehicle suppliers that are competing to launch Boeing=s satellites, and ultimately to customers. The proposed Consent Agreement remedies this concern by requiring that for any satellite manufactured by Boeing/Hughes prior to the date the Consent Agreement becomes final, Boeing must provide satellite interface information, as that term is defined in the Consent Agreement, to any launch vehicle supplier within thirty (30) days from the date Boeing receives a request for such information. The Order also requires Boeing to notify all launch vehicle suppliers, in writing, that satellite interface information relating to any Boeing/Hughes satellite bus, model, or product line is available upon request. Boeing/Hughes is also required to provide each launch vehicle supplier with instructions on how to request such information. The Consent Agreement further requires Boeing to provide satellite interface information relating to any of its satellite buses, models, or product lines manufactured after the date this Consent Agreement becomes final, to any

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launch vehicle supplier that requests such information or to whom Boeing previously supplied satellite interface information. However, for each satellite manufactured for the United States Government, Boeing shall only be required to provide satellite interface information to any launch vehicle supplier specified by the United States Government. In addition, the Consent Agreement requires Boeing/Hughes to provide satellite interface information to any launch vehicle supplier specified by any satellite customer no later than Boeing provides such information to its own launch vehicle businesses.

Fourth, the Commission has appointed Sheila Widnall as a monitor trustee pursuant to the proposed Consent Agreement to ensure that Boeing complies with the provisions of the Order. The monitor trustee will, among other things, assist the Commission in monitoring Boeing's compliance with the firewall requirements of the Order and Boeing's efforts to provide satellite interface information to other launch vehicle competitors. Because satellite interface information often involves technical information, the monitor trustee will aid in evaluating the contents of the satellite interface information that is to be distributed. Under the provisions of the Consent Agreement, the monitor trustee will serve for a period of ten (10) years and provide, among other things, written reports sixty (60) days after she is appointed detailing Boeing's compliance with the proposed Consent Agreement and annually thereafter for the next ten (10) on the anniversary of the date the Decision and Order becomes final.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and Decision & Order, and it is not intended to constitute an official interpretation of the Consent Agreement and Decision & Order or to modify their terms in any way.

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

IN THE MATTER OF

ALLIANT TECHSYSTEMS INC.

Docket No. 9254.

Order, October 2, 2000

Order reopening and modifying order.

ORDER REOPENING AND MODIFYING ORDER

On June 13, 2000, Alliant Techsystems Inc. (“Alliant”) filed its *Petition of Alliant Techsystems Inc. to Reopen and Modify Final Order* (“Petition”) requesting that the Federal Trade Commission (“Commission”) reopen the order in Docket No. 9254 (“Order”) and replace the prior approval requirement with a prior notice requirement to be in effect until the Order is scheduled to terminate.¹ Alliant made its Petition pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), Section 2.51 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.51, and the *FTC Policy Statement Concerning Prior Approval and Prior Notice Provisions*, issued on June 21, 1995, and published at 60 Fed. Reg. 39,745-47 (August 3, 1995) (“*Prior Approval Policy Statement*” or “*Policy Statement*”). The Petition was on the public record for thirty days. No comments were received.

The Commission, in its *Prior Approval Policy Statement*, “concluded that a general policy of requiring prior approval is no longer needed,” citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino (“HSR”) Act, 15 U.S.C. § 18a, to protect the public interest in

¹ The Order was issued on March 16, 1993, and became final on March 25, 1993, the date on which the Order was served on Alliant. Accordingly, the prior notification provisions will terminate on March 25, 2003.